

JAN 25 2006

AO 243 (Rev. 5/85)

MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT  
SENTENCE BY A PERSON IN FEDERAL CUSTODY

For The Northern Mariana Islands

<b>United States District Court</b>		District IN THE U.S. DIS. COURT FOR THE NORTHERN DISTRICT OF MARIANA ISLANDS (Deputy Clerk)	
Name of Movant ANDREW K. QUIAMBAO		Prisoner No. 02426-093	Case No. CR-4-00002-02
Place of Confinement F.C.I. LOMPOC LOW, LOMPOC, CALIFORNIA-93436		<b>CV 06 - 0004</b>	
UNITED STATES OF AMERICA		V. ANDREW K. QUIAMBAO (name under which convicted)	

**MOTION**

1. Name and location of court which entered the judgment of conviction under attack U.S. DISTRICT COURT  
IN THE NORTHERN DISTRICT OF MARIANA ISLANDS

2. Date of judgment of conviction JULY 1ST, 2004

3. Length of sentence 37 (MONTHS)

4. Nature of offense involved (all counts) CONSPIRACY TO COMMIT ARSON UNDER TITLE 18  
U.S.C. SECTION 844(n).

5. What was your plea? (Check one)

- (a) Not guilty ☐  
(b) Guilty ☒  
(c) Nolo contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

N/A

"

"

6. If you pleaded not guilty, what kind of trial did you have? (Check one)

- (a) Jury ☐ N/A  
(b) Judge only ☐ N/A

Did you testify at the trial?

Yes ☐ No ☒

Do you appeal from the judgment of conviction?

☐ No ☒

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9. If you did appeal, answer the following:

- (a) Name of court \_\_\_\_\_ N/A
- (b) Result \_\_\_\_\_ N/A
- (c) Date of result \_\_\_\_\_ N/A

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications or motions with respect to this judgment in any federal court?

Yes ☐ No ☐

11. If your answer to 10 was "yes," give the following information:

- (a) (1) Name of court \_\_\_\_\_ N/A
- (2) Nature of proceeding \_\_\_\_\_ N/A
- \_\_\_\_\_ "
- (3) Grounds raised \_\_\_\_\_ N/A
- \_\_\_\_\_ "
- \_\_\_\_\_ "
- \_\_\_\_\_ "
- \_\_\_\_\_ "
- (4) Did you receive an evidentiary hearing on your petition, application or motion?  
Yes ☐ No ☐  
N/A N/A
- (5) Result \_\_\_\_\_ N/A
- (6) Date of result \_\_\_\_\_ N/A

(b) As to any second petition, application or motion give the same information:

- (1) Name of court \_\_\_\_\_ N/A
- (2) Nature of proceeding \_\_\_\_\_ N/A
- \_\_\_\_\_ "
- (3) Grounds raised \_\_\_\_\_ N/A
- \_\_\_\_\_ "
- \_\_\_\_\_ "
- \_\_\_\_\_ "
- \_\_\_\_\_ "

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(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

N/A N/A

N/A

(5) Result

N/A

(6) Date of result

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion? N/A N/A

(1) First petition, etc. Yes ☐ No ☐(2) Second petition, etc. Yes ☐ No ☐

N/A N/A

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

"

"

"

"

"

"

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"

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all ground in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of the grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.
- (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impanelled.
- (i) Denial of effective assistance of counsel.
- (j) Denial of right of appeal.

A. Ground one: COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE WHERE HE FAILED TO OBJECT TO THE COURT'S DECISION TO IMPOSE RESTITUTION AS A CONDITION OF THE DEFENDANT'S SUPERVISED RELEASE.

Supporting FACTS (state *briefly* without citing cases or law) RESTITUTION IN THIS CASE, WAS MADE A CONDITION OF THE DEFENDANT'S SUPERVISED RELEASE BY COURT ORDER. THE COURT, REALIZING THAT ITS DECISION WAS NOT GOVERNED BY ANY EXPLICIT STATUTORY COMMAND, GROUNDED ITS DECISION SOLELY ON THE SENTENCING GUIDELINES MANDATE THAT: A COURT "SHALL" ENTER A RESTITUTION ORDER AS AUTHORIZED UNDER 18 U.S.C. §§ 3663 and 3664. BECAUSE THE COURT ACTED PRIOR TO THE ADVENT OF BOOKER, IT BELIEVED THAT THE GUIDELINES MANDATED THE IMPOSITION OF RESTITUTION, WHICH WAS IMPOSED ON THE CONDITION OF SUPERVISED RELEASE. ALLOWING THE ILLEGAL IMPOSITION OF RESTITUTION TO STAND UPON SUCH INVALID GROUNDS WOULD VIOLATE DUE PROCESS OF LAW AND WOULD ALSO CONSTITUTE A COMPLETE MISCARRIAGE OF JUSTICE.

B. Ground two: COUNSEL WAS CONSTITUTIONALLY INEFFECTIVE WHERE HE FAILED TO OBJECT TO THE AMOUNT OF RESTITUTION IMPOSED AND ITS FAILURE TO BREAKDOWN THE JOINT AND/OR THE SEVERED PAYMENTS BY EACH DEFENDANT AND OTHER FINDINGS.

Supporting FACTS (state *briefly* without citing cases or law): IN ITS DETERMINATION OF WHETHER TO ORDER RESTITUTION UNDER 18 U.S.C. § 3663, AND THE AMOUNT OF RESTITUTION, THE COURT SHALL CONSIDER THE AMOUNT OF THE LOSS SUSTAINED BY ANY VICTIM AS A RESULT OF THE OFFENSE, THE FINANCIAL RESOURCES OF THE DEFENDANT AND HIS DEPENDENTS, AND, SUCH OTHER FACTORS AS THE COURT DEEMS APPROPRIATE. THE STATUTE MANDATES THAT THE COURT CONSIDER CERTAIN FACTORS IN DETERMINING WHETHER OR NOT TO EXERCISE ITS DISCRETION TO ORDER RESTITUTION PURSUANT TO TITLE 18 U.S.C. § 3663(a)(1). CLEARLY, COUNSEL SHOULD HAVE REQUESTED OF THE COURT TO MAKE SPECIFIC FACTUAL FINDINGS AS TO THE DEFENDANT'S ABILITY TO PAY RESTITUTION IN THE FIRST INSTANCE. THE DEFENDANT WAS, IN FACT, DEPRIVED OF HIS SIXTH AMENDMENT RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL.

C. Ground three: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

D. Ground four: \_\_\_\_\_

Supporting FACTS (state *briefly* without citing cases or law): \_\_\_\_\_

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: THE DEFENDANT IS UNTRAINED IN LAW AND HE HAVE NO PREVIOUS TRAINING AT PERFORMING LEGAL RESEARCH, AND THEREFORE, HE PLACED ALL OF HIS TRUST AND CONFIDENCE IN HIS LAWYER TO PRESERVE AND PROTECT EACH OF HIS CONSTITUTIONAL RIGHTS, OF WHICH, HE FAILED TO DO, AS SUCH, THE DEFENDANT NOW RAISE THE INSTANT CLAIMS IN THIS SECTION 2255 MOTION.

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing JOHN T. GORMAN, ESQUIRE, 400 route 8, SUITE 501, MONGMONG, GUAM-96910.

(b) At arraignment and plea SAME

"

(c) At trial SAME

"

(d) At sentencing SAME

"

"

(e) On appeal \_\_\_\_\_ N/A

"

(f) In any post-conviction proceeding \_\_\_\_\_ N/A

"

(g) On appeal from any adverse ruling in a post-conviction proceeding \_\_\_\_\_ N/A

"

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☐(a) If so, give name and location of court which imposed sentence to be served in the future: N/A

"

"

(b) Give date and length of the above sentence: N/A

"

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☐

N/A N/A

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

**PRO SE**\_\_\_\_\_  
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

JANUARY 11TH, 2006

(date)

\_\_\_\_\_  
Signature of Movant